

APPEAL NO. 180208  
FILED MARCH 7, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 13, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a right shoulder complete thickness transverse tear of the distal rotator cuff; (2) the appellant/cross-respondent (claimant) had disability resulting from the compensable injury of (date of injury), beginning on March 4, 2016, and continuing through April 11, 2017; and (3) the claimant did not have disability resulting from the compensable injury of (date of injury), on March 3, 2016, as well as beginning on April 12, 2017, and continuing through the date of the CCH.

The claimant appealed that portion of the ALJ's disability determination for the time periods that he did not have disability. The respondent/cross-appellant (carrier) responded, urging affirmance of that portion of the disability determination that was not favorable to the claimant.

The carrier appealed the ALJ's determinations of extent of injury as well as that portion of the disability determination that was determined in favor of the claimant. The claimant responded, urging affirmance of the determinations appealed by the carrier.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of a right shoulder sprain/strain. The claimant testified he injured his right shoulder while trying to remove a portion of a fitting when he stretched out his right arm to keep from falling forward.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

## EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), extends to a right shoulder complete thickness transverse tear of the distal rotator cuff is supported by sufficient evidence and is affirmed.

## DISABILITY

At the CCH, the parties modified the disability issue as follows:

Did the claimant have disability from the compensable injury of (date of injury), beginning on March 3, 2016, and continuing through the date of [the CCH]?

In evidence is an operative report dated March 4, 2016, which reflects the claimant underwent a right shoulder open rotator cuff repair, right shoulder arthroscopic distal clavicle resection, and right shoulder arthroscopic subacromial decompression and debridement. Further, in evidence is a termination slip from the employer dated March 2, 2016. That document provides the following reason for the claimant's termination: the claimant "was required to quit due to medical reasons (Shoulder)." The claimant testified that he got paid up until March 2, 2016, and that he has not earned any wages from anywhere after March 2, 2016, to the date of the CCH. The ALJ noted in his discussion of the evidence that the claimant was released to return to work without restrictions on April 12, 2017. In evidence is a Physician Work Activity Status Report from Concentra Medical Centers that states the claimant could return to regular duty on April 12, 2017.

In Finding of Fact No. 4, the ALJ determined that the compensable injury of (date of injury), was a cause of the claimant's inability to obtain and retain employment at wages equivalent to his pre-injury wage, beginning on March 4, 2016, and continuing through April 11, 2017, but not for **March 2, 2017**, or any other period after April 11, **2016**. In Conclusion of Law No. 4, the ALJ determined the claimant had disability resulting from the compensable injury of (date of injury), beginning on March 4, 2016, and continuing through April 11, 2017. In Conclusion of Law No. 5, the ALJ determined that the claimant did not have disability resulting from the compensable injury of (date of injury), on March 3, 2016, as well as beginning on April 12, 2017, and continuing through the date of the CCH.

The evidence reflects that the claimant was terminated for medical reasons due to his shoulder on March 2, 2016, and had an operation to repair his right shoulder on March 4, 2016. The ALJ's determination that the claimant did not have disability on March 3, 2016, is so against the great weight and preponderance of the evidence as to

be clearly wrong and manifestly unjust. Accordingly, we reverse that portion of the ALJ's disability determination that the claimant did not have disability on March 3, 2016, and render a new decision that the claimant had disability beginning on March 3, 2016. That portion of the ALJ's disability determination that the claimant had disability beginning March 4, 2016, and continuing through April 11, 2017, is supported by sufficient evidence and is affirmed. That portion of the ALJ's disability determination that the claimant did not have disability from April 12, 2017, through the date of the CCH is supported by sufficient evidence and is affirmed.

The ALJ mistakenly found in Finding of Fact No. 4, that the claimant did not have disability after April 11, **2016** (an incorrect year), which conflicted with his determination of the ending date of disability. We reform Finding of Fact No. 4, to reflect that the claimant did not have disability after April 11, 2017, rather than 2016, as stated by the ALJ. Further, we note the ALJ mistakenly found in Finding of Fact No. 4, that the claimant did not have disability for March 2, 2017, rather than March 3, 2016. The ALJ's determination regarding disability on the March 3, 2016, date was reversed and rendered as described above.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to a right shoulder complete thickness transverse tear of the distal rotator cuff.

We reform Finding of Fact No. 4, to reflect that the claimant did not have disability after April 11, 2017.

We reverse that portion of the ALJ's determination that disability began on March 4, 2016, and render a new decision that the claimant had disability beginning on March 3, 2016.

We affirm that portion of the ALJ's determination that the claimant had disability from March 4, 2016, and continuing through April 11, 2017.

We affirm that portion of the ALJ's determination that the claimant did not have disability from April 12, 2017, through the date of the CCH.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANIES** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE CO.  
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge